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AUG 19 1959
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No. 186

In the Supreme Court of the United States

OCTOBER TERM, 1959

WONG KWAI SING, PETITIONER

v.

JOHN FOSTER DULLES, SECRETARY OF STATE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	5
Conclusion	6

CITATIONS

Statute:	
Rule 52(a) Federal Rules of Civil Procedure	5

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OPINIONS BELOW

The opinion of the Court of Appeals (Vol. II, R. 30–34) [1] is reported at 265 F. 2d 131. The findings of fact and conclusions of law of the District Court appear at Vol. I, R. 14–17.

JURISDICTION

The judgment of the Court of Appeals was entered on April 6, 1959 (Vol. II, R. 35). The petition for a writ of certiorari was filed on July 6, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] The designation "R" refers to the two-volume record which is being lodged with the Clerk herewith.

QUESTION PRESENTED

Whether the evidence was sufficient to support the trial court's finding that petitioner is not a citizen of the United States.

STATEMENT

On August 21, 1951, petitioner, who was born in China, filed a complaint in the United States District Court for the Northern District of California seeking a declaratory judgment that he is a citizen of the United States. In the complaint he alleged that he is the lawful blood son of Wong Lum Sang, a native-born citizen of the United States and a resident of California (Vol. I, R. 1–5).

At the trial, all the witnesses for petitioner first gave their direct testimony; they were all then cross-examined (Tr. 34).[2] On direct examination the alleged father, Wong Lum Sang, testified that he had been born in Honolulu and that at the age of nine months his mother, Lum Shee, took him to China. He married Lee Shee in China and had four children born at Bon Mee Yin Village. Petitioner was the third son, born on May 15, 1921 (Tr. 23). The alleged father came to the United States in 1923 and was admitted as an American citizen (Tr. 19). He visited his family in China in 1948 and found three sons, one having previously been admitted to the United States (Tr. 28).

Petitioner testified that with his other three brothers he attended school in the village where he was born for twelve years (Tr. 43). He remembered his father, not too clearly, when he was

[2] The designation "Tr." refers to the transcript of the trial proceedings and is lodged with the Clerk of this Court.

two years old, and he saw him again in 1948 (Tr. 43). He did not know how old he was when he saw his father the second time (Tr. 44), or how old his brothers were (Tr. 45–46). He did not know when his mother died but it was after he came to the United States (Tr. 47). He never saw his paternal grandfather and never saw his maternal grandparents (Tr. 42).

The second son was admitted as the child of an American citizen in 1941. He returned to China in 1949, and married in Hong Kong. He and his wife visited the village for a short time. He testified that petitioner was his brother (Tr. 48–54). The wife testified that when she visited the family, the mother, the father who was then there, and the other three sons lived in the same house (Tr. 71).

On cross-examination, the alleged father testified that petitioner had sent the father pictures of himself, exactly when the father did not remember, but after World War II (Tr. 74–75). He admitted that when he returned to the United States in 1923 he reported only three sons. He did not know of the birth of a fourth son until the boy was 36 because a fortune teller advised his wife not to tell him (Tr. 82). He sent money to his wife and received acknowledgment thereof about two or three times a year, but he did not ask her how the family was and she did not report (Tr. 83). Later on, he testified, she asked him to make arrangements for petitioner to come to the United States and he did so (Tr. 84).

Petitioner testified on cross-examination that he wrote to his father and sent the father pictures of

himself at the father's request (Tr. 101). He said the other brothers also wrote to the father (Tr. 102). He testified that he attended school more than ten years, but the school had only four grades (Tr. 108). He said he attended twelve or thirteen years because he had to repeat (Tr. 108). None of his brothers was in the same grade in school (Tr. 111). He testified that he lived in one house with his paternal grandmother and that his mother and brothers lived in another house (Tr. 112–113).

As to the alleged father's citizenship, there was produced a certificate of identity issued by the United States immigration officials and a passport issued by the State Department, showing him to be a citizen of this country (Tr. 16, 28). Both documents were issued to Wong Lum Sang upon his statement that he was born in Hawaii. His birth is not recorded anywhere in Hawaii. The only evidence to show that the alleged father was a citizen of this country was the death record of his father in Honolulu and the departure records from Honolulu to China of a woman named Lum Shee and an unnamed child. There is no record nor evidence to show any association between Wong Lum Sang and Lum Shee. Wong Lum Sang claimed to be the only child of his parents, but the Immigration and Naturalization Service files show that seven Chinese persons entered Hawaii as the only child of the same parentage claimed by Wong Lum Sang (Tr. 12, 87, 90–91).

The district court found that petitioner had failed to meet the burden of proving (1) that he was the son of Wong Lum Sang and (2) that Wong Lum

Sang was a citizen of the United States (Vol. I, R. 14–17). The Court of Appeals unanimously affirmed on the ground that the trial court's findings were not clearly erroneous (Vol. II, R. 35).

ARGUMENT

The only issue presented is the factual question whether petitioner failed to establish that he is the son of the alleged father, and that the latter is a citizen of the United States.[3] The Court of Appeals, after a careful review of the evidence, concluded that the trial court's findings against petitioner on these two issues were not "clearly erroneous" under Rule 52(a) of the Federal Rules of Civil Procedure. That conclusion was correct, and there is no question warranting further review.

As the Court of Appeals pointed out (Vol. II, R. 31), the trial court did not believe the testimony presented by petitioner that he was a member of the family of Wong Lum Sang (his alleged father) "because of improbabilities and major discrepancies in the testimony". The trial court was fully warranted in rejecting the testimony on these grounds. The alleged father had so little knowledge of his family in China that he had not known he had a fourth son until that son was 36 years old. He said he never inquired about the family and never asked for pictures. Petitioner, on the other hand, testified

[3] Petitioner states (Pet. 5, 7, 10) that a greater burden of proof was placed upon him in seeking to establish his American citizenship than in the case of non-Chinese individuals, but offers no support for the contention. Actually, this is but another formulation of his basic contention that the evidence is insufficient to support the trial court's findings.

that he corresponded with his father and sent his picture at the father's request. Petitioner said he lived with his paternal grandmother in a house different from that in which his mother and brothers lived. The sister-in-law said she found the family living under one roof. Petitioner said he went to school for twelve years and then identified the school as having four grades, attempting to explain his testimony by saying that he constantly had to repeat. See, also, the other inconsistencies and improbabilities set forth in the Court of Appeals' opinion.[1]

In short, the trial judge who heard the testimony and saw the witnesses was fully justified in concluding that petitioner had failed to make out even a prima facie case of American citizenship.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1959.

[1] In addition, the citizenship of the father himself was questionable. While he had been given an American passport, it was on the basis of his statement that he had been born in Honolulu. He told different stories about how he learned that he had been born there, first saying an uncle had told him and then his mother (Tr. 11-12). This fact, among others, impressed the trial judge as casting doubt on the alleged father's citizenship (Tr. 124).

U. S. GOVERNMENT PRINTING OFFICE: 1959